



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

January 10, 1985

A Massachusetts resident ("Donor") desires to transfer appreciated securities to a pooled income fund ("Fund"). Donor will retain a lifetime interest in the securities and will contribute the remainder interest to the beneficiary of the Fund. The beneficiary is a public charity described in Internal Revenue Code ("Code") § 501(c)(3) and registered in the District of Columbia. We assume that the Fund meets all the requirements of Code § 642(c)(5).

You inquire 1) whether Donor would include in his Massachusetts gross income a capital gain on his transfer of the appreciated securities to the Fund; and 2) whether Donor would be liable for tax in the District of Columbia or in any other jurisdiction on account of such transaction.

Generally, a pooled income fund is a "trust...to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in [§ 501(c)(3)], and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer)." Code § 642(c)(5)(A).

Massachusetts gross income is federal gross income with certain exceptions not here relevant. G.L. c. 62, §2(a). Under federal law, a donor recognizes no gain (or loss) on the transfer of property to a pooled income fund. Reg. §1.642(c)-5(3). Since no federal gross income is recognized on the transfer, no Massachusetts gross income is recognized on the transfer.

Therefore, in response to your first inquiry, Donor need not report a capital gain on his Massachusetts return on account of the transfer of securities to a pooled income fund.

In response to your second inquiry, we cannot rule on whether Donor would be liable for tax on account of this transaction in the District of Columbia or in any other jurisdiction. In order to receive a determination relative to any tax reporting requirements for the District of Columbia, we recommend contacting its Department of Finance at the following location:

District of Columbia
Department of Finance and Revenue
Municipal Center
300 Indiana Ave., N.W.
Washington, D.C. 20001

Tel. #(202) 629-4665

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. O. Pelus", is written over the typed name of the Commissioner of Revenue.

Commissioner of Revenue

IAJ:HW:loc

LR 85-4